

REMARKS

In the final Office Action,¹ the Examiner:

- (a) rejected claims 1, 2, 4, 5, 8-11, and 14 under 35 U.S.C. § 102(b) as being anticipated by Okumura (U.S. Patent No. 6,008,871) ("Okumura"); and
- (b) rejected claims 3, 6, 7, 12, and 13 under 35 U.S.C. § 103(a) as being unpatentable over Okumura.

Applicants propose to amend independent claim 1 by incorporating the features recited in claim 4 into claim 1, followed by canceling claim 4. Applicants also propose to amend dependent claims 5 and 6 only to improve form. Upon entry of this Amendment, claims 1-3 and 5-14 remain pending. Applicants respectfully traverse the rejection for at least the following reasons.

Rejection of Claims 1, 2, 4, 5, 8-11, and 14 under 35 U.S.C. § 102(b):

The rejection of canceled claim 4 is moot. Applicants traverse the rejection of claims 1, 2, 5, 8-11, and 14 under 35 U.S.C. § 102(b) as being anticipated by Okumura. Okumura does not anticipate claims 1, 2, 5, 8-11, and 14.

In order to properly establish anticipation under 35 U.S.C. § 102, the Federal Circuit has held that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki*

¹ The Office Action may contain statements characterizing the related art, case law, and claims. Regardless of whether any such statements are specifically identified herein, Applicants decline to automatically subscribe to any statements in the Office Action.

Motor Co., 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). See also M.P.E.P. § 2131.

Okumura fails to teach or suggest each and every element recited in these claims, despite the Examiner's allegations. For example, Okumura fails to teach or suggest "[a] liquid crystal display apparatus comprising: ... a liquid crystal layer..., wherein said liquid crystal layer maintains first and second stable states in the absence of an applied voltage, and one of said first and second stable states is set as said second mode," as recited in claim 1 (emphasis added).

The Examiner alleged that "Okumura discloses ... the liquid crystal layer 408 maintains one of the first and second stable states in the absence of an applied voltage, and one of the first and second stable states is set as the second mode (without using birefringence mode)" (Office Action, p. 3). However, this is not correct.

Okumura discloses that "[t]he liquid crystal layer 105 is made of an STN liquid crystal compound twisted in 210E-270E but if display capacity is small, a TN liquid crystal compound twisted in 90E may be used. The twist angle is determined depending on the direction of orientation alignment of upper and lower glass substrates and the amount of chiral additive added to the liquid crystal" (col. 6, lines 49-55).

Okumura also discloses that "[t]he function of the liquid crystal display device of example 1 is described by referring to FIG. 4. ... the linear polarized light in the area 409 where the liquid crystal panel is ON and the linear polarized light in the area 408 where it is OFF cross each other at a right angle, respectively," (col. 8, lines 26-58).

Okumura further discloses in Fig. 4 that the OFF state and the ON state of the liquid crystal display device are maintained by applying a voltage to the liquid crystal display

device. However, Okumura does not teach or suggest “[a] liquid crystal display apparatus comprising: … a liquid crystal layer…, wherein said liquid crystal layer maintains first and second stable states in the absence of an applied voltage, and one of said first and second stable states is set as said second mode,” as recited in claim 1 (emphasis added).

For at least the reasons discussed above, Okumura does not teach or suggest each and every element recited in independent claim 1. Therefore, Okumura does not anticipate independent claim 1. Independent claim 1 is allowable, and dependent claims 2, 5, 8-11, and 14 are also allowable at least due to their dependence on base claim 1. Thus, the rejection of claims 1, 2, 5, 8-11, and 14 under 35 U.S.C § 102(b) is overcome and should be withdrawn.

Rejection of Claims 3, 6, 7, 12, and 13 under 35 U.S.C. § 103(a):

Applicants traverse the rejection of claims 3, 6, 7, 12, and 13 under 35 U.S.C. § 103(a) as being unpatentable over Okumura. No *prima facie* case of obviousness has been established.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. See *M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007)*. “A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention.” *M.P.E.P. § 2145*. Furthermore, “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary

skill in the art" at the time the invention was made. *M.P.E.P. § 2143.01(III), internal citation omitted.* Moreover, "[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." *M.P.E.P. § 2141.02(I)*, internal citations omitted (emphasis in original).

"[T]he framework for objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q 459 (1966).... The factual inquiries ... [include determining the scope and content of the prior art and] ... [a]scertaining the differences between the claimed invention and the prior art." *M.P.E.P. § 2141(II)*. "Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." *M.P.E.P. § 2141(III)*.

Here, a *prima facie* case of obviousness has not been established because the Office Action has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the claimed invention and the prior art. Accordingly, the Office Action has failed to clearly articulate a reason why the prior art would have rendered the claimed invention obvious to one of ordinary skill in the art.

Claims 3, 6, 7, 12, and 13 depend upon base claim 1. As explained above, Okumura does not teach or suggest "[a] liquid crystal display apparatus comprising: ... a liquid crystal layer..., wherein said liquid crystal layer maintains first and second stable states in the absence of an applied voltage, and one of said first and second

stable states is set as said second mode," as recited in claim 1 and required by dependent claims 3, 6, 7, 12, and 13 (emphasis added).

The Examiner's allegations fail to cure the deficiencies of Okumura. The Examiner alleged that "arranging transmission axis of various optical layers ... is well known in the art," that "the use of liquid crystal molecules with 45 degrees slant is well known," and that "the use of absorbing layers in liquid crystal display ... is well known" (Office Action, p. 5-6). However, whether these allegations are correct or not, neither Okumura, nor the Examiner's allegations, nor any combination thereof, teaches "[a] liquid crystal display apparatus comprising: ... a liquid crystal layer..., wherein said liquid crystal layer maintains first and second stable states in the absence of an applied voltage, and one of said first and second stable states is set as said second mode," as recited in claim 1 and required by dependent claims 3, 6, 7, 12, and 13 (emphasis added).

In view of the shortcomings of the prior art and the errors in analysis of the prior art set forth in the Office Action, the Office Action has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the claimed invention and the prior art. Moreover, there is no motivation for one of ordinary skill in the art to modify the references to achieve the claimed combinations. Thus, the Office Action has failed to clearly articulate a reason why the prior art would have rendered the claimed invention obvious to one of ordinary skill in the art. Accordingly, no *prima facie* case of obviousness has been established. The 35 U.S.C. § 103(a) rejection of claims 3, 6, 7, 12, and 13 is therefore improper and should be withdrawn.

Conclusion:

Applicants respectfully request that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 1-3 and 5-14 in condition for allowance. The proposed amendments do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner. Therefore, this Amendment should allow for immediate and favorable action by the Examiner.

In view of the foregoing, Applicants request reconsideration of the application and withdrawal of the rejections. Pending claims 1-3 and 5-14 are in condition for allowance. Accordingly, Applicants request a favorable action.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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By:


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